

USPTO Doesnt Believe Anyone Will Celebrate Draï Day

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Pennsylvania gynecologist and obstetrician Dr. Draïon M. Burch - who often goes by the moniker "Dr. Draï" in marketing his practice - doesn't produce hit hip-hop records.

Legendary rapper and producer Dr. Dre doesn't provide medical advice.

To keep those distinctions clear, Dr. Dre looked to the government for help in making sure no one mixes the two up. But after a heated three-year legal battle, Dr. Dre [lost his trademark opposition proceeding against Burch](#), an actual doctor from Pittsburgh.

As a rapper, record producer and entrepreneur, Dr. Dre, whose real name is Andre Young and has used Dr. Dre for over 30 years, filed an opposition against registration applications for the mark DR. DRAI, in standard character and design form. Burch applied for the mark in association with educational, entertainment, and consulting services, and audio books and electronic publications, in the field of women's and men's health.

Dr. Dre claimed that a registration would result in a likelihood of confusion with his trademark rights and, more particularly, a registered mark DR. DRE for musical sound recordings and entertainment services, as well as false association. Dr. Dre further argued that his own name is similar and appears on the same type of media, such as MP3 files and other types of public performances.

A trademark is a word, phrase, symbol or design, or a combination thereof, that identifies and distinguishes the source of the goods of one party from those of others. Ownership of a mark, at least with respect to the geographic area of use, is generally established in the United States by actual use of the mark in connection with the sale of goods and services. This is priority -something that Dr. Dre could establish - and as long as the owner continues to use the mark, then the owner will retain those rights indefinitely with respect to the goods and services attached to the mark. However, even without priority, Burch argued the marks could be distinguished and consumers were unlikely to be confused by coexistence of both marks. Ultimately, the U.S. Trademark Trial and Appeal Board agreed and determined there was no evidence consumers would be confused between the opposing trademarks and to the source of educational and motivational speaking services or its medical and health care products and services under the applied for mark Dr. DRAI. They further found no evidence that Dr. Burch intended to trade on the goodwill associated Dr. Dre.

Even with the loss in front of the appeal board, Dr. Dre took a necessary step in defending his trademark. Since a trademark is supposed to assure a consumer that they are buying from a single source, owners who tolerate infringing uses of their mark risk losing all their rights in the mark if a third-party challenger claims the owner abandoned their mark by not enforcing it against others. Hence, Dr. Dre felt it was necessary to oppose the registration applied for by Dr. Burch. Otherwise, acquiescing can lead to abandonment of

trademark rights. Win or lose, this was a proceeding that Dr. Dre and his team were required to perform in order to preserve Dr. Dre's rights against others that may cause actual confusion.

If you have any questions about trademarks and what needs to be done to defend them, please [contact me](#) or any other member of the [Barley Snyder Intellectual Property Practice Group](#).

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